

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICKY SOPER,

Plaintiff,

v.

ORDER

16-cv-164-bbc

STATE OF WISCONSIN, PORTAGE
COUNTY SHERIFF'S DEPT.,
JEFF COEY, WAYNE KROPIDLOWSKI
BRIAN MANDEVILLE, MIKE SCHULTZ
PORTAGE COUNTY SHERIFF'S OFFICE
SPECIAL RESPONSE TEAM,
DALE O'KRAY, BEN BEAUDOIN,
DAN WACHOWIAK, TRAVIS MORGAN,
TRAVIS LEWANDOWSKI, JASON MEIDL,
RYAN HOFFMAN, JARED MAYER,
MATTHEW MCDONALD, KEVIN FLICK,
KIMBERLY DESROSIER, THOMAS FLUGAUR,
CASS COUSINS, CRAIG JASCOR
and ANTHONY GISCHIA,

Defendants.¹

Pro se plaintiff Ricky Soper has filed a complaint about various incidents arising out of a criminal investigation for growing marijuana. He has paid the full filing fee, so he is not proceeding in forma pauperis under 28 U.S.C. § 1915. Now before the court is a motion to

¹ Plaintiff identified defendant Thomas Flugaur as "Tomas Flugart" and Cass Cousins as "Cas Cousins" in his caption. I have amended the caption to reflect the correct spellings of these individuals, as identified by defendants themselves.

dismiss filed by defendants Thomas Flugaur, Cass Cousins and Craig Jascor, along with the State of Wisconsin. Dkt. #9.

Plaintiff alleges that defendant Thomas Flugaur was the circuit court judge assigned to plaintiff's criminal case; defendant Cass Cousins was the prosecutor; and defendant Craig Jascor was a probation officer. The only conduct by these defendants that plaintiff describes in his complaint is that they "humiliated" him during a court proceeding by laughing at one of his statements. (Most of the other defendants are law enforcement officers. I understand plaintiff to be contending that they searched and seized his property, in violation of the Fourth Amendment and the due process clause. I need not consider these allegations at this stage of the proceedings because Flugaur, Cousins, Jascor and the state are the only defendants who filed a motion to dismiss.)

Defendants argue that they are entitled to immunity and that plaintiff has failed to state a claim upon which relief may be granted against them. Plaintiff does not respond to any of defendants' arguments in his one-page opposition brief. Rather, he says that it would be "unjust" to dismiss his claims because he has invested money in bringing the lawsuit.

The amount of money a litigant spends on a lawsuit has no bearing on the question whether a claim has merit. Although it may be rude and unprofessional to laugh at a criminal defendant during a court proceeding, it does not violate the defendant's rights. Other than embarrassment, plaintiff does not identify any way in which Flugaur's, Cousins' and Jascor's conduct harmed him. Accordingly, I am granting the motion to dismiss as to those three defendants.

Plaintiff does not explain in his complaint or his brief why he included the state as a defendant. Regardless of the reason, I agree with defendants that the state cannot be sued in this case. As defendants point out, the Supreme Court has held that the Eleventh Amendment protects states from most lawsuits. Virginia Office for Protection & Advocacy v. Stewart, 563 U.S. 247, 253–54 (2011). Even with respect to claims for constitutional violations, the Court has held that a lawsuit against a state is not authorized. Will v. Michigan Dept. of State Police, 491 U.S. 58, 65-66 (1989). Because plaintiff does not identify why an exception to immunity would apply in this case, I am dismissing the complaint as to the state as well.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendants Thomas Flugaur, Cass Cousins, Craig Jascor and the State of Wisconsin, dkt. #9, is GRANTED. Plaintiff Ricky Soper's complaint is DISMISSED as to those four defendants.

Entered this 14th day of September, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge